IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/02/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.45496 OF 2002
AND
W.P.M.P.NO.66430 OF 2002 & WVMP.NO.44 OF 2003

Umesh M. Tahilramani .. Petitioner

-Vs-

1. Regional Transport Officer,
Southern Region,
Chennai 600 041.

2. Asst Registrating Authority,
South Madras, Thiruvanmiyur,
Chennai 600 041.

3. Inspector of Police (Law and Order)
J4 Kottupuram Police Station,
Chennai 85.

4. Senior Manager,
Canara Bank, Mandavellipakkam,
Chennai 28.

5. G. Vimala,
South Boag Road,
T. Nagar, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.K. Chandrasekaran

For Respondents 1-3 : Mr. P.S. Jayakumar
Government Advocate

Respondent-5 : Mr. T.K. Sampath

:J U D G M E N T

The petitioner has prayed for quashing the endorsement of Transfer

dated 22.11.2002 in respect of the vehicle bearing Registration No.TN-09AA 8093 and forbearing the third respondent from seizing the aforesaid vehicle.

2. The petitioner claims to be the owner of the car bearing the aforesaid Registration Number which had been purchased by availing loan from the fourth respondent bank. The same was registered in the name of the petitioner on 15.7.2002 and hypothecation endorsement was made in favour of 4th respondent bank. It has been stated that at the time of obtaining loan he had executed necessary documents and had also signed blank forms necessary under the Motor Vehicle Act for transfer of the car in favour of the bank to facilitate change of ownership in the event of bank repossessing the vehicle for non-payment of the instalments. The petitioner has averred that he had been driven out of the house on 7.11.2002 by his estrang ed wife and he had given a complaint to the third respondent on 28.11.2002. It is further alleged that 5th respondent had taken the registration papers relating to the vehicle and subsequently got the ownership of the vehicle transferred in her name with the active connivance of the respondents, particularly 2nd and 4th respondents. It has been also asserted that he was called to the police station on 10.12.2002 and made to sit for hours and it was disclosed that unless possession of the vehicle is handed over to 5th respondent, serious action would be taken against her. It has been indicated that on the enquiry made by the petitioner, the bank itself has written a letter acknowledging the fact that entire loan amount had been discharged. It has been further stated that 4 th respondent bank had connived with 5th respondent and handed over the discharged Registration Certificate along with blank ownership forms fraudulently and on the basis of those forms, transfer of ownership in favour of 5th respondent has been effected. On the basis of the aforesaid averments, the petitioner has prayed for quashing the endorsement regarding change of ownership in favour of 5th respondent and to restrain 3rd respondent from effecting seizure of the vehicle.
3. At the time of entertaining the writ petition, an order of status quo was passed. Petition for vacating the said order was filed subsequently.

4. Fifth respondent has filed a counter denying the allegations made by the petitioner.

5. It has been asserted by 5th respondent that the amount had been paid by the Company and subsequently the loan was discharged through the cheques issued by her. It is further stated that when serious disputes are raised with regard to factual aspects, approaching the High Court under Article 226 of the Constitution of India is not the proper remedy.

6. The questions raised in the writ petition involve determination of many factual disputes for which it would be more appropriate to approach other appropriate forum, either civil or criminal. If the police considers that it would be appropriate to seize the vehicle in connection with the aforesaid criminal case, the police is required to report about the seizure to the Criminal Court/Magistrate having jurisdiction over the matter and the question of custody of the vehicle would only arise at that stage. If custody of the vehicle is not handed over to the petitioner, it would be always open to the petitioner to invoke Section 457 Cr.P.C. claiming custody of the vehicle

during pendency of the criminal proceedings. Otherwise after disposal of the criminal case, it would be always open to the court to pass orders regarding custody of the vehicle under Section 452 Cr.P.C.. Moreover, it is always open to the aggrieved party to establish right over the vehicle before the appropriate civil court.

6. For the aforesaid reasons, I am not inclined to issue the directions sought for and leave it open to the petitioner to seek for appropriate relief before the appropriate forum. The writ petition is accordingly disposed of along with the connected WMPs. No costs.

Index : Yes
Internet : Yes
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To
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